



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of

Atty. Docket

JOHANNES F. M. D'ACHARD VAN ENSCHUT

PHN 16, 219A

Serial No. 09/022,132

Group Art Unit: 3714

Filed: FEBRUARY 11, 1998

Examiner: C. WHITE

METHOD FOR OPERATING A VIDEO GAME WITH BACKFEEDING A VIDEO IMAGE OF A
PLAYER, AND A GAME ARRANGED FOR PRACTISING THE METHOD

Commissioner for Patents
Washington, D.C. 20231

REPLY BRIEF

Sir:

In response to the Examiner's Answer mailed on March 26, 2002,
please consider the following remarks:

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Response to Examiner's Summary of Invention

The Examiner's Answer declares that the Summary of Invention contained in the Appeal Brief is deficient because it does not refer to the specification by page and line number, and to the drawings, if any, by reference characters, and thereby, Appellant's "Summary of the Invention" is dismissed in favor of a "concise explanation ..." It must be noted that although, the line reference supporting Appellant's Summary was deficient, the suitable text was identified

by a paragraph position with the proper page and paragraph identification provided in support of the Appellant's Summary. Further, reference was also provided to a figure (FIG. 2) and the display of the currently high scoring player of the particular session (field 72 of FIG. 2). Thereafter, the Examiner's Answer provides a Summary that completely leaves out the inventive features at issue.

As clearly stated on page 3, line 30 through page 4, line 3 (previously described as the last paragraph at the bottom of page 3 and continuing onto page 4) (emphasis provided) "competition between two simultaneous players could be introduced in that the two processing devices 24 and 34 are joined through some interconnection mechanism 40. The latter could be a local network, an interconnection to the Internet system or any appropriate item. Now, the two gaming sessions can be joined to each other, for example, in a racing duel. For example, the camera could take up the images of the driver that actually leads the pack, for display on all displays 20, 30." Further on, on page 4, lines 5 through 15 it is stated that "Figure 2 is an actual image of a racing game. ... The image first contains the dashboard 64 of the driver (=player) in question. In front of the actual car the road 66 to be taken has been shown. Far out in front can be seen the car 68 of the driver that leads the pack. ... First, field 70 shows the lag of the driver in question

behind the leading driver, second field 72 shows an image of the face of the driver who is actually in front, and field 74 shows the driver that has covered the overall racing circuit in the shortest time. If the present player himself is actually leading the pack, either the field for the image of the leading driver is empty, or the image of the actual driver is displayed." It is this ability to display the leading player of a given session during game play that "enhances the competitive character of such a game still further: for example in a car-racing environment all players could have the face of the leading driver on their display during further racing." (See, page 2, lines 10 through 12.)

However, none of this was clearly explained in the Examiner's Answer and yet this is a strong basis for the Applicant's belief that Claims 1 and 6 are not obvious in light of the cited prior art.

Response to Examiner's Response to Argument

It appears that the Examiner's Answer does not dispute the position clearly set out in U.S. Patent No. 4,710,873 to Breslow ("Breslow", the patent discussed in the Examiner's Answer starting in the last paragraph on Page 5, through the continuing paragraph on page 7, line 6 on that page) that it is the images of "six previous champions as determined by the top scoring game players in previous plays of the game are introduced on the display as shown in FIG. 4e."

The game play does include the face of a current player, irrespective, of their lead in the current gaming session, together with these six previous champions from previous plays.

It should be noted that this type of parking lot game (see, Col. 4, lines 42 through 57 of Breslow) has no way of showing a player in the lead of a current session. In Breslow, there is no lead in a current session until six of the seven cars are parked because until that time, any one of the seven players may be eliminated by not obtaining one of the six available parking spaces. It is only after this point (after the end of game play), that a high-score is even determined (see further discussion below).

However, from this point in the Examiner's Answer (starting on page 7, line 6 of the Examiner's Answer), the position taken is strongly contested.

Specifically, the Examiner's Answer takes each of the elements, both shown in the prior art, and required by the currently pending claims, out of the context of what is shown and what is required. It is this reconstruction that requires impermissible hindsight that is not gleamed from the teachings of the references as a whole in conjunction with the level of ordinary skill in the art at the time that the invention was made. It is this type of selective reconstruction, ignoring the context of what is in fact shown in the prior art, that was rejected by the Federal Circuit in "In re Gordon,

733 F.2d 900, 902 (Fed. Cir. 1984) and was followed in later decisions including In re Lakowski, 871 F.2d 115, 117 (Fed. Cir. 1989) as previously cited in Appellant's Appeal Brief, page 5, lines 18 through 22. This parking lot game of Breslow does not provide any motivation to alter what is clearly shown therein to arrive at or even suggest the desirability of modification in the way suggested by the Examiner's Answer and as required by current Claims 1 and 6. As stated above, what is the sense of modifying a parking lot game to display a high scoring player of a current session when there is no determination of a relative high score until after the play of the game. As stated in Breslow, Col. 5, lines 39-52, (emphasis provided) "[a]fter the play of the game as determined by either the survival of the game player or elimination during one of the rounds, the play of the game ends with a display of the top six scores as indicated in FIG 4e including the respective score 76 and the respective game player image 78. If the present game player or challenger has obtained a higher score than one of the previous six champions, the game player display of the new high scorer and his or her associated score replaces one of the previous six champions and is included in the display in FIG. 4e." Accordingly, there is no determination of high score until after the play of the game. So how does this teach a person, without the use of hindsight, to display a high scorer of a

given session during the session? I believe that it is clear that it does not.

The position stated on page 7, lines 6 through 10 of the Examiner's Answer, that "[f]rom the reading of Breslow given above, one skilled in the art would understand that the method argued by Appellant ... is met by the Breslow reference" completely ignores the teaching of Breslow that the champions displayed are champions from previous game play displayed together with a current player (see above, this is clearly set out within the four corners of Breslow). This clearly is not equivalent to, or suggestive of displaying the currently high scoring player from the current session as required by the claims.

The Examiner's Answer then takes the position on page 8, line 3 through 19 that these arguments are not commensurate with the scope of Claims 1 and 6. However, the Examiner's Answer completely ignores the antecedence of these claim elements. To aid in the following discussion of the claims structure, Claim 1 is set out again herein with the individual elements labelled for ready reference:

1. (Four times amended) A method for operating a multi-player video game, the method comprising:
 - [A] enabling each player of multiple players to interact with a gaming environment,
 - [B] machine-detecting a score and/or performance of each player in a particular session of the video game,
 - [C] backfeeding into the gaming environment a video image of a currently high-scoring player, and

[D] displaying the gaming environment, and the video image of the currently high-scoring player of the multiple players in a prominent location, during the particular session of the video game.

Element D of Claim 1 (emphasis provided throughout) "displaying ... the video image of the currently high-scoring player of the multiple players in a prominent location, during the particular session of the video game." To determine who the multiple players are, you must utilized the antecedence of the claim. The antecedence of the claim can not be ignored in determining obviousness with regard to the prior art. This determines if the past champions of Breslow satisfy this claim limitation or if the limitation, as proposed by the Applicant, does require display of the current high scorer of the session to be displayed during the session.

Element A states that "each player of multiple players" are enabled to interact. Accordingly, the currently high scoring player that is displayed during the particular session of element D must be one of the "each player of multiple players" of element A. Now, element B requires "machine detecting a score ... of each player in a particular session ..." As stated from element A, each player is from the multiple players. Element B therefore requires that the score is detected of the multiple players (Element A) of a particular session. Returning to element D, Claim 1 therefore requires displaying the currently high scoring player of the multiple players

of a particular session (element B) during the particular session (element D).

The arguments therefore forwarded in the Appellants Brief were in fact commensurate with the scope of the Claims.

With regard to Claim 6, set out herein for ready reference:

6. (Four times amended) A video game system being arranged for running a multi-player video gaming environment, comprising

- [A] a user interface that is configured to enable each player of multiple players to interact with the gaming environment,
- [B] a detector that is configured to detect a score and/or performance of each player during a particular session of the video game,
- [C] a backfeeding device that is configured to: backfeed into the gaming environment a video image of a currently high-scoring player of the multiple players, and
- [D] display that is configured to display the gaming environment, and the video image of the currently high-scoring player in a relatively prominent position, during the particular session of the video game, and one or more cameras that are configured to provide the video image of each player.

Claim 6 requires a display configured to display the video image of the currently high scoring player during the particular session of the video game (element D). The currently high scoring player is of the multiple players (element C). Each player, together, makes up the multiple players (element A). Element B requires a detector that is configured to detect the score of each player of the multiple players during a particular session, which

necessarily, is the particular session in which the display is configured to display the current high-scoring player (element D). Accordingly, the arguments made in the Appellant's Brief with regard to Claim 6, similarly to Claim 1, were in fact commensurate with the scope of the claimed limitations.

With regard to the Reply Brief that states on page 10, lines 1-13, that proper motivation to modify Breslow is supplied by Breslow in Col. 1, lines 48-49, this argument again attempts to take what is in fact shown by Breslow, out of context. All Breslow shows, and suggests is that including an image of the individual playing the game in the game play enhances excitement. This is not a motivation to display "the currently high-scoring player" of a particular session "of the multiple players in a prominent location, during the particular session ..." U.S. Patent No. 4,521,014 to Sitrick does not cure this deficiency as explained in the Appeal Brief.

For all of these reasons, in addition to those presented in Appellant's Appeal Brief, Claims 1-4 and 6-9 should be allowed.

Respectfully submitted,

By 
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May 24, 2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first-class mail in an envelope addressed to:
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On May 24, 2002
By 